

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**v**

**File No. 120362-001**

**Blue Cross Blue Shield of Michigan**

**Respondent**

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**Issued and entered**  
**this 28<sup>TH</sup> day of September 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On March 31, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on April 7, 2011.

The Petitioner receives health care benefits through Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate* (the certificate). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on April 18, 2011.

Because medical issues were involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on April 21, 2011. (A copy of the complete report is being provided to the parties with this Order.)

**II. FACTUAL BACKGROUND**

The Petitioner has been diagnosed with prostate cancer. On May 22, 2010, he underwent a High Intensity Focused Ultrasound (HIFU) procedure at the XXXXX Medical Centre in

XXXXX. The charge for this care was \$25,000. BCBSM denied coverage, asserting that the treatment was investigational and therefore excluded under the terms of the certificate.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference on January 20, 2011, and issued a final adverse determination on February 7, 2011, upholding its position.

### **III. ISSUE**

Did BCBSM correctly deny coverage for the Petitioner's HIFU treatment?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

In his request for external review, the Petitioner wrote:

My procedure was a "surgical prostatectomy" that was performed at a facility designated by my provider, Dr. XXXXX, M.D. of XXXXX, XXXXX. Dr. XXXXX is a member of the AMA. As explained to me by XXXXX of the Blue Cross/Blue Shield Appeals Unit, "surgery is surgery" and each prostatectomy is considered a surgery. Surgical ablation is a covered benefit as well as a prostatectomy which is what my procedure was.

The efficacy of this procedure is in the multiple lab results of three tests to date are as follows; PSA 0.1, incontinence 0.0%, and potency 0.0%.

This procedure was decided by two physicians who are members of the AMA, to be the best surgery due to my condition. All other procedure options were also considered and all decided that this was my best direction to take for a successful outcome and it was with no added complications.

In reference to payment, my expectations are this; I am NOT expecting a 100% reimbursement. I am only asking Blue Cross/Blue Shield to honor and follow their present international policy which is: 50% out-of-network minus any copayments or deductibles.

I have recently been informed that BCBS of Michigan paid with no rejections at all for the exact same procedure I had. . . .

#### **BCBSM's Argument**

BCBSM states that under the terms of the certificate, investigational services are not covered. The certificate, in "Section 6: General Conditions of Your Contract," contains the following provision:

### **Experimental Treatment**

#### Services That Are Not Payable

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment . . .

In Section 7, the certificate defines experimental treatment as “[t]reatment that has not been scientifically proven to be as safe and effective for treatment of the patient’s conditions as conventional treatment.”

BCBSM’s medical consultants reviewed the Petitioner’s medical documentation and determined there is insufficient evidence contained in medical literature of the impact on health outcomes to support the effectiveness of HIFU treatment for prostate cancer. Therefore, BCBSM did not approve payment for the Petitioner’s HIFU treatment.

#### Commissioner’s Review

The question of whether the HIFU is experimental was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of Patient’s Right to Independent Review Act. The IRO reviewer is a physician board-certified in urology who has been in practice for more than 10 years and who holds an academic appointment. The reviewer’s report includes the following comments:

. . . [T]his case involves a 53 year-old male who has a history of prostate cancer. At issue in this appeal is whether the high intensity focused ultrasound that the member underwent was experimental/investigational for treatment of his condition.

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. . . [H]igh intensity focused ultrasound remains investigational for treatment of prostate cancer at this time. . . . [T]he long term safety and efficacy of this procedure have not been established by clinical trials. [Citations omitted.]

While the Commissioner is not required in all instances to accept the IRO’s recommendation, it is afforded deference. In a decision to uphold or reverse an adverse determination, the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16) (b). The IRO reviewer’s analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Petitioner also argued that BCBSM was inconsistent in its payments for his care. He indicated he had recently become aware that BCBSM had paid for this procedure. It is not known whether BCBSM may have paid for this procedure for other members. This issue has not been presented to the Commissioner before. Even if BCBSM had paid for this procedure on occasion in the past (and there is no evidence that it has done so), the finding of the IRO that the procedure is experimental is persuasive on that question.

The Commissioner finds that BCBSM's denial was in compliance with the terms of the certificate.

#### **V. ORDER**

Blue Cross Blue Shield of Michigan's final adverse determination of February 7, 2011, is upheld. BCBSM is not required to pay for the Petitioner's HIFU procedure.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.